

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MITCHEL L. JOSEPH,

Appellant,

vs.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13520

Trial Court No. 4TO-18-00068CR

**PETITION FOR REHEARING**

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

The State of Alaska asks for rehearing in this case. *See* Alaska R. App. P. 506. This court issued a memorandum opinion in this case, remanding the case to the trial court to consider whether the trooper's inaccurate advisement regarding the consequences of Joseph's refusal to submit to a breath test actually influenced his decision to refuse to submit to the test. *Joseph v. State*, 2022 WL \_\_\_\_\_, 2 (Alaska App. April 13, 2022) (unpublished slip op.).

In discussing Joseph's remedy for the inaccurate advisement, the court noted that he "would likely be entitled to an evidentiary hearing if he raised this issue in a post-conviction relief application." *Joseph*, slip op. at 6. But AS 12.72.020(a)(1) bars Joseph from raising this issue in a postconviction

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relief application because he has already raised the claim his direct appeal. Joseph's only avenue of postconviction relief for his claim would be to assert that his lawyer in his criminal case was ineffective for failing to challenge the inaccurate advisement.

Rehearing is necessary because this court overlooked or failed to consider AS 12.72.020(a)(1), which specifies what claims may not be asserted in a postconviction relief application. *See* Alaska R. App. P. 506(a)(1). This court should grant rehearing and correct the language that implies Joseph could directly attack the trooper's inaccurate advisement in a postconviction relief application.

DATED April 13, 2022.

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**CERTIFICATE OF SERVICE AND TYPEFACE**

I, Sylva M. Ferry, state that I am employed by the Alaska Department of Law, Office of Criminal Appeals, and that on April 13, 2022, I emailed a copy of the State's PETITION FOR REHEARING and this CERTIFICATE OF SERVICE AND TYPEFACE in the above-titled case to:

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I further certify, pursuant to App. R. 513.5, that the font used in the aforementioned documents is Century Schoolbook 13 point.

  
Sylva M. Ferry